IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

W.P.No.45725 of 2002

The Deputy Superintendent of Police
Sriperumbudur Sub-Division
I/C Chengalpattu Sub-Division
Kanchipuram District. .. Petitioner

versus

1. W.D.Sekaran

2. The Registrar
Tamil Nadu Administrative Tribunal
Chennai. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records of the second respondent herein pertaining to the order dated 26.9.2001 made in O.A.No.888 of 2001 and to quash the same.

For petitioner : Miss V.Velumani
Addl. Government Pleader

For respondent-1 : Mr.S.Ravi for
M/s.Sudha Ravi Associates

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ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

The Deputy Superintendent of Police, Sriperumbudur Sub-Division, Kancheepuram District, aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 26.9.2001, made in O.A.No.888 of 2001, has filed the above writ petition.

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2. The brief facts are stated hereunder:

According to the petitioner, the first respondent was working as Head Constable in Kancheepuram District with effect from 5.6.2000 and while he was serving in the Economic Offices Wing, one Smt.Saleema Bee, residing at 129, G.S.T. Road, Chengalpattu, came to Chengalpattu Town Police Station and lodged a complaint to the effect that on 14.12.2000 dated 10.00 p.m., while she was returning home after making phone call, a police man pulled her hand and threatened to get into the autorickshaw, otherwise he would do harm to her and at that time, her husband came there and she informed the matter to her husband. Her husband brought her to the police station and reported the matter to take action against the policeman. On the basis of the complaint, the Sub-Inspector of Police, Chengalpattu Town, registered a case in Crime No.970/2000 under Section 354, 506 (i) I.P.C. The investigation disclosed that the first respondent had misbehaved with the said lady and outraged her modesty by pulling her hands and criminally intimidated her on 15.12.2000 at 10.00 hours at Chengalpattu Old Bus Stand. He was arrested and remanded by the orders of the Judicial Magistrate-I, Chengalpattu. The first respondent herein was placed under suspension on 15.12.2000 by the Superintendent of Police, Kancheepuram and a Charge Memo under Rule 3(b) of Tamil Nadu Police Subordinate Services (Disciplinary & Appeal) Rules, 1955 in PR.No.145/2000 was served on the first respondent on 21.12.2000.

3. After receipt of the charge memo, the first respondent had filed O.A.No.888 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai. The criminal case which was registered against the first respondent ended in acquittal on 09.04.2001 by Judicial Magistrate-I, Chengalpattu, since all the prosecution witnesses turned hostile. The Administrative Tribunal, by order dated 26.9.2001, after referring the fact of acquittal of the criminal charges, allowed the Original Application and quashed the charge memo. Questioning the same, the petitioner has filed the present writ petition.

4. Heard the learned Additional Government Pleader for the petitioner and the learned counsel for the first respondent.

5. The point for consideration in this writ petition is whether the Tribunal is justified in quashing the charge memo dated 19.12.2000 on the sole ground that the criminal case launched against the delinquent on the same footing had ended in acquittal.

6. In order to consider the said issue, it is useful to refer the substance of the charge memo which reads "Unbecoming conduct of a Police Personnel by misbehaving with one lady Sabena Bee W/o Thiru Shabbi on 14.12.2000 at 22.00 hrs. at Chengalpattu Bus Stand and

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thereby involved in the Criminal Case in Chengalpattu Town Police Station Cr.No.970/2000 u/s 354, 506(i), I.P.C".

7. The learned Additional Government Pleader, by drawing our attention to the order passed by the learned Judicial Magistrate-I, Chengalpattu, in C.C.No.82 of 2001 dated 9.4.2001, would submit that inasmuch as all the prosecution witnesses turned hostile, without going into the merits, the learned Magistrate acquitted the accused - first respondent herein. According to her, inasmuch as irrespective of the decision of the Criminal Court the department is entitled to proceed in respect of the same charge / charges, even otherwise, according to her, since the acquittal by the Magistrate Court is not on merits, but due to the fact that the prosecution witnesses turned hostile, taking note of the allegations made against the delinquent, the department is entitled to proceed with the charge memo and the Tribunal has committed an error in quashing the charge memo, simply on the basis of the order of the Criminal Court.

8. No doubt, the learned counsel appearing for the first respondent, by taking us through the charge memo dated 19.12.2000 and the charge laid before the Criminal Court, contended that inasmuch as the charge memo rests solely on the criminal prosecution, after the order of the Criminal Court acquitting the delinquent, the Administrative Tribunal is fully justified in quashing the identical charge memo. We have already extracted the charge memo. No doubt, the charge memo proceeds on the basis of the complaint of one Saleema Bee in respect of an incident that is said to have taken place on 14.12.2000. Based on a similar complaint, though the criminal case was proceeding against the first respondent herein, the Court acquitted him on the ground that there is no evidence to support the charge. We have also perused the order of the learned Magistrate dated 9.4.2001. We are satisfied that the said order came to be passed not on merits, but due to non-cooperation of prosecution witnesses.

9. In this regard, learned Additional Government Pleader heavily relied on the decision of the Supreme Court reported in JT 2002 (Suppl.1) SC 520) (SECRETARY, MINISTRY OF HOME AFFAIRS AND ANOTHER Vs. TAHIR ALI KHAN TYAGI). The question that was posed before the Supreme Court was whether the departmental proceeding could be initiated after acquittal in the criminal proceeding and whether Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, would stand as a bar for initiation of such proceedings. The following conclusion of Their Lordships are relevant:

> "6. Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after

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acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

7. That apart, the second part of rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if in the opinion of the court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of rule 12, a departmental proceeding could be initiated. In this view of the matter, we are of the considered opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible. "

10. In 2005 (1) CTC 625 (THE MANAGEMENT OF THIRUVALLUVAR TRANSPORT CORPORATION Vs. S.ANTHONYSAMY), a Division Bench of this Court has held as follows:

"8. It is well settled that on the same charges when there is a criminal proceeding as well as a domestic enquiry, merely because the workman is found innocent in the criminal case, it does not mean that he cannot be found guilty in the departmental/domestic enquiry vide Thenmozhi v. The Chairman & Managing Director, Neyveli Lignite Corporation in W.A.Nos.202 and 203 of 2005 dated 8.2.2005. "

11. It is also useful to refer another Division Bench decision of this Court reported in 2002-III-L.L.J. 66 (STATE OF TAMIL NADU Vs. H.A.MUNAF AND ANOTHER):

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"27. It is therefore clear that it is not axiomatic that in all the cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. It is by now settled that if the acquittal in the criminal proceedings is not a honourable one, it is always open to proceed with the departmental proceedings. It is also now made clear that having regard to the fact that the delinquent may apprehend prejudice in the event of the criminal proceedings and the departmental enquiry being simultaneously proceeded with, the departmental enquiry can be commenced after the final conclusion of the criminal proceedings. A honourable acquittal would only mean an acquittal which is free from any doubt. Therefore merely because a person came to be acquitted on the ground that the charge was not proved beyond all reasonable doubts, it cannot be held that the person was honourably acquitted so as to hold that he was given a clean chit of the charges levelled against him. "

12. Learned Additional Government Pleader has also placed reliance on another Division Bench decision reported in (2005) 4 M.L.J. 104 (UNION OF INDIA Vs. CENTRAL ADMINISTRATIVE TRIBUNAL), wherein the Division Bench has held that in a Departmental enquiry, the guilt can be arrived at on the preponderance of probability. The Division Bench held that the appreciation of evidence is the exclusive domain of the disciplinary authority, to consider the evidence on record and to render findings, whether charges have been proved or not.

13. Learned counsel for the first respondent, by drawing our attention to the decision of the Supreme Court (1999) 3 SCC 679 (M.PAUL ANTHONY Vs. BHARAT GOLD MINES LTD.), would submit that since the charge memo is based on the criminal proceedings, in view of the acquittal by the orders of the learned Magistrate, the Department is not entitled to proceed further and the Tribunal is fully justified in interfering even at the stage of the charge memo. In the light of the said contention, we have gone through the factual details available in that case. Though it is brought to our notice that the facts and evidence in department as well as in criminal proceedings were the same, without there being any iota of difference as in Paul Anthony's case as pointed out above, there was no decision by the criminal Court on merits. Hence, we are of the view that the decision relied on by the learned counsel for the first respondent is not helpful to his stand.

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14. By drawing our attention to the Tamil Nadu Police Standing Orders with reference to procedure to be followed after acquittal by the Criminal Court, learned counsel for the first respondent submitted that there is no valid ground for interference. We verified the relevant clauses from the Tamil Nadu Police Standing Orders as enclosed in the additional typed set of papers by the first respondent, and after thorough scrutiny, we are unable to accept the stand of the learned counsel for the first respondent. He also brought to our notice the order of the Government in G.O. (2D) No.256, Home Department dated 31.7.2002, wherein the Government, after accepting the decision of the Tamil Nadu Administrative Tribunal in O.A.No.2604/98 etc. dated 21.09.1998 and the opinion of the Director General of Police, implemented the order of the Tribunal and allowed the person concerned to retire from service with effect from 31.07.1998. We also perused the entire order and we are of the view that the said Government Order is to be confined to the particular person concerned. Learned counsel has also brought to our notice, the letter of the Government dated 10.12.2002, informing the Director General of Police that the Officers have to ensure that the charges are framed carefully in the departmental proceedings so as to withstand any judicial review. Though there is a reference that after acquittal in a criminal case and if the said decision is directly on the issue relating to the charge/charges framed in the department, may not be proceeded with as discussed in the earlier paragraphs, in the light of the peculiar facts of the case, namely the criminal case ended in acquittal only due to the reason that the prosecution witnesses turned hostile and there was no decision on merits, we are of the view that the said letter/communication is also not helpful to the case of the first respondent.

15. In the light of our discussion, it is clear that it is not axiomatic that in all cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. As rightly observed by the earlier Division Bench of this Court in 2002-III-L.L.J. 66 (STATE OF TAMIL NADU Vs. H.A.MUNAF AND ANOTHER) cited supra, if the acquittal in the criminal proceeding is not a honourable one, it is always open to proceed with the departmental proceedings. The Tribunal has not gone into the above relevant aspects and committed an error in quashing the charge memo at the threshold.

16. We set aside the order of the Tamil Nadu Administrative Tribunal dated 26.9.2001 made in O.A. 888 of 2001 and permit the petitioner/Department to proceed with the charge memo in accordance with law. It is made clear that we have not expressed anything on the merits of the charge levelled against the first respondent and we concentrated mainly on the issue that even after the decision of

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the Criminal Court, the Department, considering the facts and circumstances of the case, is entitled to proceed.

With the above observation, the writ petition is allowed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar
Tamil Nadu Administrative Tribunal
Chennai.

2. The Deputy Superintendent of Police,
Sriperumbodur Sub Division,
I/C Chengalpattu Sub Division,
Kanchipuram District.

+ 1 cc to Government Pleader, SR No.44358

+ 1 cc to M/s Sudha Ravi Associates, SR No.44362

SKV(CO)
SR/15.11.2005

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